

In the Matter of merchant Mariner's Document No. Z-688221 and all
other Licenses, Certificates and Documents
Issued to: FAUSTO COUVERTIER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FAUSTO CONVERTIER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 16 December 1955, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-688221 issued to Fausto Couvertier upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as utilityman on board the American SS INDEPENDENCE under authority of the document above described, on or about 4 November 1955, while said vessel was in the port of Barcelona, Spain, he

- 1) wrongfully created a disturbance a disturbance in the vicinity of the passenger gangway;
- 2) wrongfully addressed abusive language to the Second Officer;
- 3) wrongfully disobeyed a lawful order of the Third Officer;
- 4) wrongfully addressed threatening language to the Third Officer.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice. He entered a plea of "not guilty" to the charge and each specification preferred against him.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements and the Investigating Officer introduced in evidence the testimony of the Second and Third Officers of the SS INDEPENDENCE.

In defense, Appellant offered in evidence his sworn testimony.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions,

the Examiner announced his decision and concluded that the charge and specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document no. Z-688221 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority for a period of six months, with an additional six months' suspension held in abeyance pending a year's probationary period.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 4 November 1955, Appellant was serving as utilityman on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-688221.

On that date, Appellant returned late from shore leave at Barcelona, Spain. At the expiration of crew's leave at 1900, the crew gangway had been taken in. Late returners were required to board by the passenger gangway where the Second and Third Officers were, as was customary, on duty. One of their duties was to take from the boarding crewmembers their liberty passes for the purpose of giving the Staff Captain a list of those who had overstayed leave. At the time of Appellant's return, almost an hour late, there was continuous traffic of passengers and visitors in the gangway area. When Appellant reached the top of the passenger gangway, the Second Officer took his pass. Appellant demanded that the pass be returned to him. The Second Officer briefly told Appellant to take his explanations to the Staff Captain on the following day. Appellant addressed abusive language to the Second officer and refused to leave the scene. The Third officer approached and told Appellant to leave the area. Appellant grabbed and the Third Officer. The two officers then took Appellant by the arms to remove him from that area to the brig.

On the way to the brig, Appellant harangued in Spanish a quickly gathered group of members of the steward department, precipitating outcries also in Spanish from persons in the group. During this time Appellant was resisting the efforts of the officers to move him, and, at one point, declared to the Third Officer, "If you put me in the brig, I'll kill you," or words to that effect.

The gathering of the thirty or forty members of the steward department took place in a passenger area.

Eventually, with the aid of the of the Staff Captain, Appellant was placed in the brig. Appellant was not intoxicated during the occurrence of these incidents.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

- I the Examiner's Findings and Conclusions are contrary to the evidence;
- II the Examiner's Findings and Conclusions are contrary to the weight of the evidence;
- III the Examiner's Findings and Conclusions are contrary to law;
- IV the Order is excessive.

Appellant raises nine specific points. The first three are to the effect that Appellant's inability to understand or speak English, known to the officers, caused a misunderstanding with reference to the pass. The fourth point is that the language used by Appellant to the officers, as testified to, was language frequently used by seamen. The fifth point is that Appellant's conduct was not such not as to have required the use of force by the officers. The last four points urge reduction of the order because of Appellant's prior good record, his need to support a family of ten children, and his already sufficient chastisement through realization of his fault. It is conceded that Appellant's conduct is not to be condoned.

APPEARANCE: Benjamin Clickman, Counselor at Law 305 Broadway
New York 7, New York

OPINION

The Examiner's Findings of Fact and Conclusions of Law are based upon substantial evidence and are made according to law.

With respect to Appellant's alleged language difficulty, it is noted that the Examiner made specific reference to this claim in his opinion, saying "I was not at all convinced that the person charged was as ignorant of the use of the English language as he would have it believed from his conduct during the hearing."

Appellant testified at the hearing through an interpreter. However, he did, in response to specific questions, give in English some testimony as to statements he claims to have to the officers at the time of the occurrence. More important, the uncontroverted evidence in the record is to the effect that all conversation at

the head of the gangway took place in English, that Appellant, at the time, understood clearly what he was being told, and that Appellant did not commence speaking Spanish until the crowd of Spanish-speaking men had gathered about.

Any claimed "misunderstanding" with reference to the pass is further militated again by Appellant's long service on the ship and the long established procedure of handling late-returning members of the crew.

Appellant's contention with respect to the language which he was found to have used must be rejected. That addressed to the Second Officer, as set out in the testimony, may be language frequently used by seamen. Directed to a ship's officer in the presence of passengers and victors, it is plainly intolerable. The threat to the Third Officer may have been a spontaneous effect of emotional disturbance and may not have represented an actual intent on Appellant's part. Nevertheless, a threat of this sort cannot be justified as being "not such extreme language."

The use of force by the officers to effect Appellant's removal to the brig was made necessary by his persistent to obey orders and by his physical resistance. Appellant can receive no benefit on review from the fact that force was applied to him.

The order of the Examiner was entered after consideration of the facts in the case and the record and demeanor of the Appellant. In view of the deleterious effect that such disorderly conduct as was found here can have upon the proper operation of a ship like the SS INDEPENDENCE, the order is not considered to be excessive. The order is not considered to be excessive. The hardship to Appellant's family does not of itself outweigh the considerations upon which the Examiner's order was based.

ORDER

The order of the Examiner dated at New York, New York, on 16 December 1955 is

AFFIRMED.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of May, 1956.